BECKER & MADISON
CHARTERED
1915 EYE STREET N.W.
EIGHTH FLOOR
WASHINGTON, D.C. 20006

(202) 833-4422

TELECOPIER
(202) 296-7458

RICHARD S. BECKER
PAUL G. MADISON

OF COUNSEL
JAMES S. FINERFROCK

CONSULTING ENGINEER
SIAMAK HARANDI

July 5, 1994

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: In the Matter of
Amendment of Part 22
of the Commission's Rules
to Delete Section 22.119
and Permit the Concurrent Use
of Transmitters in Common
Carrier and Non-Common Carrier
Services
CC Docket No. 94-46

Dear Mr. Caton:

Transmitted herewith on behalf of Telecomm Systems, Inc. is an original and four (4) copies of its "Comments" filed with respect to the above-referenced matter.

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,

Richard S. Becker

Richard S. Becker
Attorney for Telecomm Systems, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 22	)	CC Docket No. 94-46
of the Commission's	)	
Rules to Delete Section 22.119	)	
and Permit the Concurrent Use of	)	
Transmitters in Common Carrier	)	
and Non-Common Carrier Services	)	

To: The Commission

COMMENTS

Telcomm Systems, Inc. ("Telecomm"), by its attorneys and pursuant to 47 C.F.R. §1.415, hereby submits these Comments in response to the Notice Of Proposed Rulemaking And Order[1] issued by the Commission in the above-captioned proceeding. In its NPRM, the Commission proposed deletion of Section 22.119 of the Commission's Rules[2] in order to permit the joint licensing and use of transmitters in the common carrier and private carrier services. In the NPRM, the Commission also granted interim waivers of Section 22.119 to three (3) parties during the pendency of the instant rulemaking proceeding.[3] The waivers allow the parties to use transmitters presently licensed for common carrier paging service under Part 22 of the Commission's Rules to also provide private

---

[1] Notice Of Proposed Rulemaking And Order, CC Docket No. 94-46, FCC 94-113 (June 9, 1994) (hereinafter "NPRM").

[2] 47 C.F.R. §22.119. This regulation currently prohibits the concurrent licensing and use of transmitters for common carrier and non-common carrier purposes.

[3] NPRM at ¶¶8-12.

carrier paging ("PCP") service currently authorized under Part 90 of the Commission's Rules.[4] Although Telecomm supports the proposal set forth in the NPRM, Telecomm respectfully submits that pursuant to the recently-enacted Congressional mandate of regulatory parity for substantially similar mobile communications services,[5] the Commission must extend its proposal to allow use of multi-frequency transmitters for more than one common carrier paging channel -- not just for one common carrier paging channel and one PCP channel. In support of these Comments, the following is respectfully shown.

I. The Interest Of Telecomm

1. Telecomm is a communications company primarily engaged in the provision of one-way paging and two-way mobile service. Telecomm provides local and wide-area paging service primarily in the States of Washington, Oregon, Idaho, Utah and Colorado. Telecomm is also in the process of expanding its paging operations to cover additional states in the Western United States. Telecomm provides its communications services pursuant to common carrier authorizations issued by the Commission in the Public Land Mobile Service ("PLMS") pursuant to Part 22 of the Commission's Rules. Among Telecomm's PLMS authorizations are licenses to provide paging

---

[4] Id.

[5] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(d)(3)(B); Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("Second R&O"), erratum, Mimeo No. 92486 (released March 30, 1994); Further Notice of Proposed Rulemaking, GN Docket No. 93-252, FCC 94-100 (May 20, 1994) ("FNPRM").

service on more than one 931 MHz PLMS paging frequency.[6] Accordingly, Telecomm is interested in the Commission's policies as they affect use of multi-frequency transmitters to provide paging service on more than one frequency.

II. The Commission Must Also Permit Use Of Multi-Frequency Transmitters For Joint Operation On More Than One PLMS Paging Frequency

2. In the NPRM, the Commission proposed to delete Section 22.119 of the Commission's Rules, thereby "permitting a single transmitter to operate on both common carrier and [PCP] channels...."[7] The Commission based its proposal on several factors, including significant advances in technology that have allowed transmitter capacity to increase dramatically and a substantial increase in competition in the paging industry that will ensure that joint use of transmitters will not harm service to existing subscribers.[8] The Commission also recognized that its proposal is consistent with the Congressional mandate to conform technical, operational, and licensing rules applicable to PLMS and PCP paging carriers that have both been classified as Commercial Mobile Radio Service ("CMRS") providers.[9]

3. Telecomm supports the Commission's proposed deletion of Section 22.119 because Telecomm agrees that joint use of a single

---

[6] See, e.g., PLMS Station KNKM 727.

[7] NPRM at ¶7.

[8] Id. at ¶3, 6.

[9] Id. at ¶5. See also 47 U.S.C. §332(c)(1); Second R&O, 9 FCC Rcd at 1411; FNPRM at ¶1.

transmitter to operate on multiple paging frequencies is in many circumstances the most efficient manner of providing needed service to paging subscribers. Telecomm respectfully submits, however, that the Commission did not go far enough in proposing to delete Section 22.119 of the Commission's Rules to allow use of multi-frequency transmitters for PLMS and PCP frequencies. Rather, in the interest of regulatory parity and in order to permit maximum efficient provision of CMRS paging service to the public, Telecomm requests that the Commission expand its proposal to: (1) make clear that multi-frequency transmitters can be utilized to operate on more than one PLMS paging frequency, as well as on a PLMS and a PCP paging frequency; and (2) reject the Commission's current proposal in another rulemaking proceeding to prohibit use of multi-frequency transmitters to operate on more than one PLMS frequency.[10]

4. Specifically, the Commission's current policy toward the permissibility of multi-frequency transmitters in the PLMS is not clear. Although there appears to be no Commission Rule specifically prohibiting use of such transmitters, the Commission has adopted a policy against this type of operation.[11] In a 1989 request for declaratory ruling ("Request"), PacTel Paging ("PacTel") asked that the Commission hold that use of such

[10]This prohibition is proposed in the Commission's outstanding rulemaking proceeding to rewrite Part 22 of its Rules. Notice Of Proposed Rulemaking, CC Docket No. 92-115, 7 FCC Rcd 3658 (1992) ("Part 22 Rewrite NPRM").

[11]See Parkway Communications, Inc., Commission letter 163500-89-18-JSG, dated May 25, 1989.

transmitters is prohibited.[12] In 1991, however, PacTel withdrew its Request stating that there was widespread use of multi-frequency transmitters in the paging industry and that PacTel "found itself at a competitive disadvantage to those who are utilizing multi-frequency transmitters as a matter of course."[13] PacTel's Withdrawal was premised on the assumption that the Commission would address the issue of multi-frequency transmitters in the PLMS in an upcoming notice and comment rulemaking proceeding.[14]

5. In point of fact, in its Part 22 Rewrite NPRM, the Commission did propose a new Section 22.507 of the Commission's Rules that would clearly prohibit use of multi-frequency transmitters.[15] The Commission stated that:

> This proposed rule would require a separate transmitter for every assigned channel at each location. This is intended to eliminate a practice among some licensees whereby one multi-frequency transmitter is installed at a site where two or more channels are authorized.

---

[12] Public Notice, MSD No. 89-30 (November 28, 1989).

[13] "Notice Of Withdrawal Of Request For Declaratory Ruling" filed with the Commission by PacTel on April 16, 1991 ("Withdrawal").

[14] Withdrawal at 3.

[15] The proposed Section 22.507 states in relevant part that:

> [E]ach station must comprise at least one separate and dedicated transmitter, providing service to the public, for each transmitting channel at each location where that channel is assigned for use by that station.

Part 22 Rewrite NPRM at Appendix B.

> Although the transmitter may transmit on any one of the authorized channels, it cannot transmit on more than one of them at the same time. We believe that such practice can result in inefficient use of the spectrum. Requiring at least one transmitter for each authorized channel at each location would discourage warehousing.
>
> Part 22 Rewrite NPRM at Appendix A.

This proposal is still pending before the Commission.[16]

6. Telecomm respectfully submits that now that the Commission has recognized in the NPRM the benefits of permitting multi-frequency transmitters for operation of PLMS and PCP paging frequencies, the Commission must also take the next step and specifically permit use of multi-frequency transmitters to operate on more than one PLMS paging frequency. The Commission should take advantage of the opportunity offered by the NPRM to: (1) make clear that multi-frequency transmitters can be utilized to operate on more than one PLMS paging frequency, as well as on a PLMS and a PCP paging frequency; and (2) reject the proposal in the Part 22 Rewrite NPRM to prohibit use of multi-frequency transmitters to operate on more than one PLMS frequency.

7. As referenced in the NPRM, dramatic increases in the capacity of paging transmitters have reduced the need for a

---

[16]On May 20, 1994, the Commission released a Further Notice Of Proposed Rulemaking in CC Docket No. 92-115, FCC 94-102 (May 20, 1994) ("Part 22 Rewrite FNPRM"). The Part 22 Rewrite FNPRM did not, however, address the issue of use of multi-frequency transmitters in the PLMS. Moreover, in its FNPRM designed to establish regulatory symmetry in the regulation of mobile communications services, including PLMS and PCP paging services now reclassified as CMRS, the Commission also did not address the issue of multi-frequency transmitters on PLMS paging frequencies. Accordingly, the Commission's original proposal to add Section 22.507 prohibiting multi-frequency transmitters in the PLMS is still outstanding.

transmitter to be devoted on a full-time basis to one frequency in order to ensure provision of high-quality service on the other frequency. Advances in digital transmission rates and techniques and store-and-forward technologies have all fundamentally altered the paging industry and render a ban on multi-frequency transmitters not only obsolete, but also injurious to a carrier's ability to provide the highest quality paging service to subscribers at the most reasonable cost. In point of fact, where licensees, such as Telecomm, intend to overlay a regional wide-area paging system on one frequency over an existing local paging system in the same area on another frequency, use of multi-frequency transmitters is the most efficient method of constructing the regional system and providing both local and regional paging service to subscribers.

8. Moreover, the extremely competitive nature of the paging industry today requires that paging carriers provide high quality service to subscribers on all frequencies allocated to the carrier. Failure to efficiently utilize all authorized channels will result in the carrier's loss of subscribers and a reduction in market share. This competitive incentive ensures that service to subscribers on multiple PLMS channels will not suffer if a multi-frequency transmitter is used. This competition also provides substantial economic penalty to any carrier that attempts to "warehouse" a PLMS channel by installing a multi-frequency transmitter and then not using the channel for service to the public.

9. In point of fact, by allowing use of multi-frequency transmitters not only in the PLMS/PCP context, but also in the PLMS/PLMS context, the Commission will foster maximum utilization of available spectrum for service to the public. Specifically, Telecomm cannot overemphasize the substantial economies that can be achieved by paging carriers if they are permitted to utilize multi-frequency paging transmitters to operate on more than one PLMS channel. Carriers, like Telecomm, will be able to build statewide and regional wide-area paging systems that will overlay existing PLMS systems much more efficiently and at a greatly reduced cost. As a result, these carriers will be able to commence operation of wide-area systems much more rapidly for service to subscribers who have increasingly demanded a wider geographic scope for paging service. Moreover, the savings that such carriers will realize can be passed on to subscribers in the form of lower rates.

10. In light of these facts, carriers with more than one PLMS paging frequency will have every incentive to construct and operate on all frequencies for which they are licensed, rather than to allow some of those frequencies to remain unused. As demand increases, licensees can continue to provide service on all frequencies based on the relatively small capital investment involved in a multi-frequency transmitter until usage grows to such a point that two (2) separate transmitters are required. At that time, the carrier will have every incentive to install a second transmitter to further increase the capacity of its paging system. In this way, authorized frequencies will be utilized most

efficiently as dictated by natural market forces, rather than as determined by artificial regulatory requirement.

11. Finally, Telecomm must point out that allowing multi-frequency transmitters for PLMS/PCP operations, while prohibiting multi-frequency transmitters for PLMS/PLMS operations, is directly contrary to the goal of regulatory parity for substantially similar services that has been articulated by both Congress and the Commission. In the Second R&O, the Commission reclassified both Part 22 PLMS paging and Part 90 PCP paging services as CMRS.[17] In its FNPRM, the Commission specifically proposed to, "focus primarily on identifying and conforming differences in technical and operational rules in Part 90 and Part 22 that would otherwise lead to arbitrary and inconsistent treatment of substantially similar CMRS licensees."[18] Telecomm respectfully submits that deletion of Section 22.119 of the Commission's Rules to allow multi-frequency transmitters on PLMS and PCP frequencies without a corresponding decision to permit multi-frequency transmitters on more than one PLMS frequency would directly contravene the goals of the Second R&O and the FNPRM. Only by allowing multi-frequency transmitters in both the PLMS/PCP and the PLMS/PLMS context can the Commission maintain the level playing field for CMRS providers that Congress and the Commission are now working to establish.

---

[17] Second Report and Order at ¶¶87-97.

[18] FNPRM at ¶22.

WHEREFORE, for all of the foregoing reasons, Telecomm respectfully supports the Commission's proposal to permit use of multi-frequency transmitters to operate on PLMS and PCP frequencies by elimination of Section 22.119 of the Commission's Rules. Telecomm respectfully submits, however, that the Commission must take the additional action of: (1) clarifying existing confusion for Part 22 PLMS licensees by making clear that multi-frequency transmitters can be utilized to operate on more than one PLMS one-way paging frequency, as well as on a PLMS and a PCP one-way paging frequency; and (2) rejecting the proposal in the Part 22 Rewrite NPRM to prohibit use of multi-frequency transmitters to operate on more than one Part 22 PLMS frequency.

Respectfully submitted,

TELECOMM SYSTEMS, INC.

By: Richard Becker

Richard S. Becker
James S. Finerfrock
Paul G. Madison

Its Attorneys

Becker & Madison, Chartered
1915 Eye Street, Northwest
Eighth Floor
Washington, DC 20006
(202) 833-4422

Date: July 5, 1994